Supreme Court of the United States

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, [illegible]

vs.

SOCONY-VACUUM OIL COMPANY

RESPONDENT'S REPLY [illegible]
WRIT OF CERTIORARI

For the Respondent

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Supreme Court of the United States

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
Petitioners,

vs.

SOCONY-VACUUM OIL COMPANY, INC.,
Respondent.

RESPONDENT'S REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Concise Statement of the Matter

The opinion of the Court below is reported in 116 F. (2d) 8, and 1941 A.M.C. 58. The Findings of Fact and Conclusions of Law of the Trial Court are not reported but are set forth in the Transcript below, pages 32 to 37.

The controversy between the parties centered upon the interpretation of a contract entered into by and between the respondent and the National Maritime Union, of which petitioners are members. The evidence was without material dispute, and it is correctly and completely set forth in the opinion of the Court below. This Honorable Court is respect-

fully referred to that opinion for a statement of the entire case.

Upon the basis of the opinion of the Court below, respondent respectfully suggests that there is no basis for the allowance of a writ of certiorari under the rules of this Court, particular reference being made to Rule 38, Section 5, b, and the cases cited in Rule 38, Section 2. There is no question here of public importance, no conflict of decisions, and the principles of law controlling the decision of the Court below are the settled and familiar ones governing the interpretation of contracts. The judgment below merely decides questions of fact peculiar to the private contract entered into by the respondent with a representative of petitioners herein. The subject matter of the contract was of no public importance.

Summary of Argument

No grounds exist for the grant of a writ of certiorari, under the rules of this Court, since it is apparent from the opinion of the Court below that the Court was merely applying general rules governing the interpretation of contracts, that its application of these rules in no way conflicted with the general rules or decisions of other Circuit Courts or of this Honorable Court, that its application of the rules of contract turned upon its findings of fact made upon the undisputed evidence, all questions herein being merely fact questions between the parties to a private contract without public importance.

Secondly, respondent respectfully submits that the facts underlying the decision of the Court below were undisputed and uncontradicted, that the application of the general rules of interpretation of contracts to these facts by the Court below was manifestly right, and that the Trial Court was obviously confused in its view of the facts and of the rules of law governing the interpretation of the contract at issue and

its decision was obviously wrong and in need of correction by the Circuit Court.

Argument Concerning Jurisdiction

Respondent feels that argument with respect to the petition for writ of certiorari is manifestly unnecessary to support its position that no ground exists under the rules of this Honorable Court for the allowance of the writ, and respondent files its reply brief in order to assure the Court of its conviction that the Court below was correct in every respect and to evidence respondent's abiding interest in the case rather than from any fear that this Honorable Court can be misled as to any grounds existing for its assuming jurisdiction by granting its writ of certiorari.

An examination of the opinion of the Court below shows that the controversy existing here is one involving a particular contract between private parties, in which the public has no interest and which dealt with a particular set of circumstances no longer existing. It accordingly follows that the subject matter of the controversy is one not of public importance, and it is obvious that the petitioners here seek to have another hearing rather than to correct any misapplication of settled rules of law or any conflict of decisions. Briefly put, the Court below held that the contract between the parties was ambiguous with respect to the ports of call embraced within the contract (i. e., one term of the contract was ambiguous), so that under general rules of contract law it was proper to consider the evidence concerning the circumstances surrounding the execution of the contract and the interpretation placed upon the contract by the parties themselves when the question was first raised whether the contract was intended to cover the port of Santa Cruz de Tenerife. The Court then examined the facts as disclosed by the undisputed evidence and found that under these facts the contract did not extend to cover this port, and was not

intended to cover the port, and accordingly held that the petitioners' claims were without foundation in fact and in law.

This Honorable Court has held that where only questions of fact are involved, such as here, this Court will not grant certiorari. Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508, 44 Sup. Ct. 164, 68 L. Ed. 413. Furthermore, this Honorable Court has held in Layne & Bowler Corporation vs. Western Well Works, 261 U. S. 387, 67 L. Ed. 712, and Magnum Import Co. vs. Coty, 262 U. S. 159, 67 L. Ed. 922, that its jurisdiction will not be used to grant the party defeated in the Circuit Court of Appeals another hearing.

Obviously the allegation in the petition for writ of certiorari here that there is a conflict between the decision of the Court below and that of this Court in The Eclipse, 135 U. S. 599, 10 S. Ct. 873, 34 L. Ed. 269, and Calderon vs. Atlas Steamship Co., Ltd., 170 U. S. 272, 18 S. Ct. 588, is without foundation. In the two cases cited this Court held that a Court of Admiralty could not entertain what was in effect a bill in equity and sit as an equity court. Here the Court below makes no pretentions even to exercise equitable powers, simply holding, under well recognized rules of law, that in interpreting the contract between the parties the circumstances surrounding the execution of the contract and the practical interpretation placed upon it by the parties themselves were controlling in arriving at the meaning of the contract, particularly since the words used were ambiguous and susceptible of different meanings. No attempt is made to reform the contract or exercise equitable principles, the admiralty court merely acting in accordance with settled rules of practice in appeals in admiralty in re-examining the evidence, as was its duty. Benedict on Admiralty (5th Ed.), Section 551; The John Twohy, 255 U. S. 77, 65 L. Ed. 511, 41 S. Ct. 251.

It is respectfully submitted that to grant the petition for writ of certiorari in this case would be giving basis for a criticism such as was made by the authors in the articles Business of the Supreme Court at the October Term, 1928, 43 Harvard Law Review 33, 51-53, and Business of the Supreme Court at the October Term, 1931, 46 Harvard Law Review 226, 241-253, by Messrs. Frankfurter and Landis, where the Court was criticized for granting its writ where no more than the particular facts were involved and the principles of decision were clear.

(B) The Decision of the Circuit Court of Appeals Was Clearly Correct, and Should Not Be Disturbed

It is of course a general rule of law that where the written contract is ambiguous as to one of its terms that the Court in interpreting the contract is entitled to be put in the position of the parties at the time of its making, and consider the circumstances of the execution and the subject matter with which the parties were dealing in order to reach a correct understanding of the meaning of the contract. While this rule has been stated in different ways, the rule itself is clearly settled law with respect to the interpretation of contracts. As it is put in Williston on Contracts, 1st Ed., Section 302:

> "But evidence of the circumstances under which a writing was given is always admissible to aid the Court in determining the true meaning of the words in the document."

See also Wigmore on Evidence, 1st Ed., Sections 2462, 2465, and 2470, and Williston on Contracts, 1st Ed., Sections 613, 623 and 629.

As the matter was succintly put by Mr. Justice Holmes when sitting in the Massachusetts Court,

> "The words used must be translated into things and facts." (Doherty vs. Hill, 144 Mass. 468, 11 N. E. 581).

See also this Honorable Court in Chicago, etc., R. R. vs. Denver, etc., R. R., 143 U. S. 596, 36 L. Ed. 277, where it was said:

> "There can be no doubt whatever of the general proposition that, in the interpretation of any particular clause in the contract, the Court is not only at liberty but required to examine the entire contract, and may also consider the relations of the parties, their connection with the subject matter of the contract, and the circumstances under which it was signed."

The Court is also respectfully referred to Nash vs. Towne, 5 Wall. 689, 18 L. Ed. 527 at 529; Virginia vs. West Virginia, 238 U. S. 203, 236, 59 L. Ed. 1272, 1278; Winona, etc., Land Co. vs. Minnesota, 159 U. S. 526, 40 L. Ed. 247; Union Pacific Railway Co. vs. Chicago, etc., R. R. Co., 163 U. S. 564, 41 L. Ed. 265; United States vs. Utah, etc., Stage Co., 199 U. S. 414, 50 L. Ed. 251; and O'Brien vs. Miller, 168 U. S. 297, 42 L. Ed. 469 at 473.

An examination of the opinion of the Court below indicates that it was merely complying with this general rule of law and deciding that under the facts here the contract did not cover the port of Santa Cruz de Tenerife, and that the Court ~~below~~ was in error in apparently refusing to consider the genesis of the contract, which clearly showed that the port in controversy was not embraced within the ports for entry into which a bonus would be paid.

The Court below also followed the familiar rule of looking to the conduct of the parties with relation to the contract as a proper aid in interpreting ambiguous language. See Williston on Contracts, Section 623, for a statement of the rule, and this Honorable Court in District of Columbia vs. Gallaher, 124 U. S. 505, 31 L. Ed. 526, where the Court said:

> "We think that the practical construction which the parties put upon the terms of their own contracts and

> according to which the work was done, must prevail over the literal meaning of the contract . . ."

and Topliff vs. Topliff, 122 U. S. 121, 30 L. Ed. 1110; Chicago vs. Sheldon, 76 U. S. 50, 19 L. Ed. 594, and Nottingham and Wrenn Co. vs. American Coal Exporting Company, Inc., 36 F. (2d) 982.

Here the contracts were entered into *after* the identical contracting parties had agreed between themselves that a contract identical with those here in suit did not embrace the port of Santa Cruz de Tenerife, when in March, 1938, the exact point was raised on the sailing of the SS Olean from Boston bound for the port of Santa Cruz de Tenerife. (See the opinion below and Record, pages 101, 102, 103, 104).

There is no evidence to support any of the criticisms of the opinion of the Court below made on page 7 of the petitioner's brief.

Respondent therefore respectfully submits that, under the undisputed evidence herein, the Circuit Court correctly held that the contract did not embrace the port of Santa Cruz de Tenerife. It is obvious from the remarks made by the Trial Court in the course of the trial, Record, pages 78, 79, and 157, and from paragraph 2 of the Trial Court's Conclusions of Law in lumping together the genesis of the contracts here with an utterly different contract made by some members of the National Maritime Union with the West African Line (R., p. 37) that the Trial Court was confused in his recollection of the general rules of law governing such cases and erroneously disregarded the undisputed evidence in the case.

Since the Circuit Court of Appeals has correctly summarized the undisputed evidence and has correctly applied the general principles of law governing the interpretation of contract in such cases, it is submitted, respondent will not burden this Court with further argument on this point.

Finally, the Court below made no attempt to reform the contracts here. Certainly there is no attempt on the part of the Court below to sit as a Court of equity rather than as one of admiralty. However, the Court of admiralty has from time immemorial maintained its right to exercise powers of equity in adjudicating cases properly before it, as this one was. See Watts vs. Camors, 115 U. S. 353, 29 L. Ed. 406; The Hiram, 14 U. S. 440, 4 L. Ed. 131; United States vs. Cornell Steamboat Company, 202 U. S. 184, 50 L. Ed. 987; Pope vs. Nickerson, Fed. Cas. 11, 274; O'Brien vs. Miller, 168 U. S. 287, 42 L. Ed. 469. The Court is also respectfully referred to the cases showing that in libels for wages, such as this one, the Court of Admiralty has long exercised wide discretionary powers, collected in Rice vs. Chas. Dreifus Co., et al, 96 F. (2d) 80 (2, C.C.A., 1938).

Of course this question is entirely different from one where an attempt is made to bring a bill in equity in the admiralty court, such as was attempted in The Eclipse, *supra*. However, since the question is not raised by the Court below, respondent respectfully refrains from further argument of so plain a proposition.

WHEREFORE, premises considered, respondent respectfully submits that the decision of the Circuit Court of Appeals was correct, made upon the undisputed evidence, and that the case is one in which under the rules of this Court no ground exists for the issuance of its writ of certiorari. Respondent therefore respectfully prays that the petition be denied.

Respectfully submitted,

ROBERT EIKEL, JR.,
Proctor for Respondent, and Counsel.